

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #5	CCRB Case #: 201708792	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/06/2017 8:30 AM	Location of Incident: East 56th Street and Madison Avenue; Midtown North Stationhouse	Precinct: 18	18 Mo. SOL 3/6/2019	EO SOL 3/6/2019	
Date/Time CV Reported Tue, 10/24/2017 1:36 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 10/24/2017 1:36 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Denzel Jacobs	20575	959709	MTN PCT
2. POM Michael Counihan	07607	944470	C R C
3. LT John Cocchi		901331	C R C

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT John Goetz	03619	917688	MTN PCT
2. POM Patrick Ruppert	10205	947444	ESS 01
3. DTS Robert Mirfield	04983	922802	E S U

Officer(s)	Allegation	Investigator Recommendation
A.LT John Cocchi	Abuse: At East 56th Street and Madison Avenue, Lieutenant John Cocchi stopped § 87(2)(b)	
B.POM Michael Counihan	Abuse: At East 56th Street and Madison Avenue, Police Officer Michael Counihan stopped § 87(2)(b)	
C.LT John Cocchi	Abuse: At East 56th Street and Madison Avenue, Lieutenant John Cocchi frisked § 87(2)(b)	
D.LT John Cocchi	Abuse: At East 56th Street and Madison Avenue, Lieutenant John Cocchi searched § 87(2)(b)	
E.POM Denzel Jacobs	Discourtesy: At the Midtown North stationhouse, Police Officer Denzel Jacobs spoke discourteously to § 87(2)(b)	
F.POM Denzel Jacobs	Abuse: At the Midtown North stationhouse, Police Officer Denzel Jacobs threatened § 87(2)(b) with the use of force.	
G.POM Denzel Jacobs	Force: At the Midtown North stationhouse, Police Officer Denzel Jacobs used a chokehold against § 87(2)(b)	
H.POM Denzel Jacobs	Force: At the Midtown North stationhouse, Police Officer Denzel Jacobs used physical force against § 87(2)(b)	

Case Summary

This complaint was filed by § 87(2)(b) on October 24, 2017 at the CCRB in-person.

On September 6, 2017, at approximately 8:30 a.m., § 87(2)(b) was walking in the vicinity of 56th Street and Madison Avenue in Manhattan. § 87(2)(b) was allegedly stopped by Lt. John Cocchi and PO Michael Counihan of the Critical Response Command (**Allegation A-B: Abuse of Authority**, § 87(2)(g)). Lt. Cocchi allegedly frisked and searched § 87(2)(b) (**Allegation C-D: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was reportedly found to have an open warrant and was brought to the Midtown North stationhouse. PO Denzel Jacobs of the Midtown North command allegedly told § 87(2)(b) “Fuck you. Fuck you, asshole” while processing § 87(2)(b) at the stationhouse (**Allegation E – Discourtesy**, § 87(2)(g)). PO Jacobs allegedly told § 87(2)(b) “I’m going to kick your fucking ass. I could kill you right now” (**Allegation F: Abuse of Authority**, § 87(2)(g)). PO Jacobs allegedly entered § 87(2)(b) holding cell, grabbed him by the neck, and pushed his head into the wall (**Allegation G-H: Force**, § 87(2)(g)).

There is no video evidence of this incident.

No arrests or summonses resulted from this incident.

Findings and Recommendations

Allegation A – Abuse of Authority: At East 56th Street and Madison Avenue, Lieutenant John Cocchi stopped § 87(2)(b)

Allegation B – Abuse of Authority: At East 56th Street and Madison Avenue, Police Officer Michael Counihan stopped § 87(2)(b)

Allegation C – Abuse of Authority: At East 56th Street and Madison Avenue, Lieutenant John Cocchi frisked § 87(2)(b)

Allegation D – Abuse of Authority: At East 56th Street and Madison Avenue, Lieutenant John Cocchi searched § 87(2)(b)

§ 87(2)(b) testified that he is homeless and was just starting his day by walking to United Nations Plaza to buy some clothes (BR01). § 87(2)(b) noticed a police car following him which he believed was related to police targeting homeless people in midtown Manhattan. Lt. Cocchi, the passenger of the police car, called out to § 87(2)(b) but he ignored him. When § 87(2)(b) stopped walking, Lt. Cocchi got out of his car and walked right in front of § 87(2)(b). Lt. Cocchi asked § 87(2)(b) why he was ignoring him and if he had any drugs on him. Lt. Cocchi frisked § 87(2)(b) legs and waistline. Lt. Cocchi reached into § 87(2)(b) pockets and removed approximately \$200 worth of cash and a Ziploc bag containing rolling tobacco. Lt. Cocchi told § 87(2)(b) that they were going to check if he had any warrants. The officers ran § 87(2)(b) name and discovered that he had an open warrant, which § 87(2)(b) acknowledged was likely for a minor offense. § 87(2)(b) was brought to the Midtown North stationhouse.

A request to the on-site IAB-CCRB Liaison did not reveal any summons issued to § 87(2)(b) on the incident date (BR02).

The 18th Precinct UF-250 log revealed no stop reports related to this incident (BR03).

The Midtown North stationhouse command log contains an entry regarding § 87(2)(b) (BR04). The entry does not list any arrest charge and there is no indication of a summons or desk appearance ticket being issued to § 87(2)(b).

PO Counihan testified that he was assigned to the Trump Tower detail (BR05). As part of his assignment, he patrols the area surrounding Trump Tower. While driving, Lt. Cocchi instructed PO Counihan to pull over because he saw § 87(2)(b) urinating on the street. PO Counihan did not witness this violation occur. Lt. Cocchi made the determination to stop § 87(2)(b). PO Counihan was not aware of any reason besides the public urination for stopping § 87(2)(b). Lt. Cocchi approached § 87(2)(b) while PO Counihan finished parking the car. When PO Counihan got to the sidewalk, he did not observe any indication that § 87(2)(b) had been urinating on the street. Lt. Cocchi spoke with § 87(2)(b) and asked him general questions such as what he was doing in the area. § 87(2)(b) raised his pants. Lt. Cocchi frisked § 87(2)(b) waistband. PO Counihan did not observe anything that made him believe § 87(2)(b) possessed a weapon. PO Counihan did not remember if Lt. Cocchi searched § 87(2)(b) pockets. § 87(2)(b) name was run for warrants and he was found to have an open warrant. § 87(2)(b) was taken to the Midtown North stationhouse. PO Counihan did not think § 87(2)(b) was issued a summons for public urination.

A request to the NYPD Department Advocate's Office revealed that Lt. Cocchi was retired as of November 1, 2017 (BR06). Consequently, a statement could not be obtained from Lt. Cocchi.

PG 212-11 states that a stop may only be conducted when a police officer has an individualized reasonable suspicion that a person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. Reasonable suspicion exists when the information known to the member of the service would make an ordinarily prudent and cautious police officer under the circumstances believe criminal activity is at hand (BR07).

§ 87(2)(g)
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Allegation E – Discourtesy: At the Midtown North stationhouse, Police Officer Denzel Jacobs spoke discourteously to § 87(2)(b)

Allegation F – Abuse of Authority: At the Midtown North stationhouse, Police Officer Denzel Jacobs threatened § 87(2)(b) with the use of force.

Allegation G – Force: At the Midtown North stationhouse, Police Officer Denzel Jacobs used a chokehold against § 87(2)(b)

Allegation H – Force: At the Midtown North stationhouse, Police Officer Denzel Jacobs used physical force against § 87(2)(b)

§ 87(2)(b) testified that PO Jacobs was processing him at the stationhouse. § 87(2)(b) complained to PO Jacobs who was going through his property in his backpack. PO Jacobs responded, “Fuck you. Fuck you, asshole.” § 87(2)(b) told PO Jacobs “Go fuck yourself, asshole.” PO Jacobs responded, “I’m going to kick your fucking ass. I could kill you right now.” § 87(2)(b) continued, “Dude, go ahead. Open the cage. Open that door. Let’s see what you got. Let’s see you kill me. You ain’t nothing.” PO Jacobs entered the holding cell with two large uniformed male officers. PO Jacobs charged at § 87(2)(b) and grabbed him with one hand by the front of his neck. PO Jacobs pushed § 87(2)(b) head into the wall. § 87(2)(b) did not make any movements with his body while this was happening. However, § 87(2)(b) stated that he started to “freak out.” During his interview at the CCRB, § 87(2)(b) became uncooperative and refused to answer additional questions regarding this aspect of the incident. § 87(2)(b) was taken to Bellevue Hospital. § 87(2)(b) sustained stiffness and pain to his neck. § 87(2)(b) refused to sign medical release forms which prevented the investigation from requesting his medical records.

The 18th Precinct prisoner holding pen roster revealed no potential witnesses to this incident (BR08).

An ESU report associated with this incident reflects that ESU officers responded to the stationhouse, entered a cell, and placed an EDP in handcuffs (BR09). While leaving, the EDP spit at the desk officer. The prisoner was restrained and placed on a stretcher.

PO Jacobs testified that he was responsible for vouchering § 87(2)(b) property (BR10). § 87(2)(b) began complaining to PO Jacobs when he was vouchering his property and made remarks such as “Don’t be touching my stuff, you faggot” and “I’m going to kick your ass.” PO Jacobs ignored § 87(2)(b) urinated in the holding cell. The desk officer, Sgt. John Goetz, came and warned § 87(2)(b) that ESU would be called if he persisted. Later, § 87(2)(b) urinated on clothing that was in the holding cell and tried to throw it at PO Jacobs through the cell bars. PO Jacobs said, “What the hell is wrong with you?” PO Jacobs alerted Sgt. Goetz. PO Jacobs denied using any profanity toward § 87(2)(b) and denied threatening him with the use of force. Sgt. Goetz requested ESU to the location. Two ESU officers arrived and removed § 87(2)(b) from the holding cell so that he could be taken to the hospital. PO Jacobs denied that he ever entered the holding cell where § 87(2)(b) was and denied that he used any force against § 87(2)(b).

Sgt. Goetz testified that he did not recall this incident (BR11).

Based on the above ESU report, PO Patrick Ruppert and Det. Robert Mirfield were identified as the ESU officers who responded to the stationhouse. PO Ruppert and Det. Mirfield provided the following generally consistent testimony (BR12-13). The officers responded to the location in response to officers reporting an uncooperative EDP who needed to be removed from the cells

and taken to the hospital. No officer was inside the holding cell with § 87(2)(b) when PO Ruppert and Det. Mirfield arrived. No officer ever grabbed § 87(2)(b) by the neck or pushed his head against the wall. No officer used any profanity toward § 87(2)(b) or threatened him with the use of force. PO Ruppert and Det. Mirfield entered the holding cell by themselves and handcuffed § 87(2)(b) without incident. As they were leaving the stationhouse, § 87(2)(b) began spitting around him. § 87(2)(b) was placed on a stretcher and removed outside to an ambulance.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Counihan has been a member of the service for 10 years and this is his first complaint.
- PO Jacobs has been a member of the service for two years and this is his first complaint.

Mediation, Civil and Criminal Histories

- This case was suitable for mediation. § 87(2)(b) Two letters explaining the eligibility for the mediation program were sent to § 87(2)(b) on November 1, 2017 and November 8, 2017. Neither letter was returned by the USPS. No response was received from § 87(2)(b)
- The NYC Comptroller's Office responded to a request indicating that no notice of claim has been filed by § 87(2)(b) regarding this incident (BR15).
- § 87(2)(b), § 87(2)(c)

Squad No.: 5

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date